IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 7492 of 2006

Smt.Dipti Santosh Sharma ..Petitioner

vs.

1. Shri Devidas Taraprasad Sharma and others ..Respondents

Shri P.N.Joshi for petitioner.
Shri S.M.Gorwadkar for respondent no.1.

CORAM: S.C.DHARMADHIARI J.
3rd December,2007

P.C.

1. Writ petition is challenging the order passed by the executing court rejecting the objections which were raised in the application which was numbered as Exhibits 166 and 170.

2. After the matter was argued for some time and my attention is invited to Exh.168, copy of which is annexed at page 78 and reply thereto filed by the decree holder, I am of the view that the Trial Court is right in disallowing the request of the petitioner to consider the amendment or the correction of the decree. That objection which is sought to be pressed into service (section 152 of the Code of Civil Procedure) is not available any longer is admitted position.

3. Shri Joshi, however, submits that there are other objections to the enforciability and executability of the decree in question. Those objections have been enlisted in the application Exh.166 and the one mentioned in paras 2 and 7 go to the root of the case. He submits that without asking for any opportunity to lead oral evidence and on the basis of the record and documents before the executing Court, the said objections could be decided and one lost opportunity be given to the petitioner to make good his case.

4. Shri Gorwadkar was at pains to point out that all the objections to the executability and enforciability of the decree have been turned down right upto the Hon'ble Supreme Court. The present petition is stating nothing new but reiterating the same.

5. After perusing the petition and annexures thereto including the impugned order, in my view, the order under challenge does not advert to the application Exh.168 and other contents thereof. The conclusions rest on the invocation of section 152 of the Code of Civil Procedure. In such circumstances, the petitioner deserves one last opportunity as she claims to be the

legal heir of original defendant no.2 Jamanabai.

6. When attention of Shri Joshi was invited to Exh.168 he stated that the objections raised in paras 2 and 7 would take care of all the matters enlisted therein and an opportunity be given to the petitioner to make good the same. In the facts peculiar to this case and in the interest of justice, one last opportunity is given to the petitioner to raise these objections and make good the same. The objections as raised would be one as to be found in paras 2 and 7 of the application Exh.168. However, the petitioner will not have any opportunity of leading oral evidence and matter must be decided on the basis of available record as expeditiously as possible by the Executing Court. Parties to appear before the executing court on 17th December, 2007 and executing court to deal with and dispose of the said application/objections as expeditiously as possible and within a period of six weeks from the date of appearance of the parties. Petition is disposed of. All contentions on merits of the said objections raised by both sides are expressly kept open.

(S.C.DHARMADHIKARI J.)